

FLATHEAD COUNTY JUSTICE COURT

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February 26, 2007

Montana House of Representatives
Appropriations Committee
Helena, Montana. 59620

Re: House Bill 60

Dear Chairman Sinrud and Committee Members:

Because of the importance of this bill, I have made time to appear before you today notwithstanding my crowded court docket. I appear personally, and on behalf of all those who have come before me without adequate legal representation, or the resources available to evaluate their claim or defense prior to becoming embroiled in litigation. The legislation is an important step in ensuring that all Montanans, irrespective of their financial ability, have access to legal resources, without which, they are denied meaningful access to the judicial system.

I have presided in this court for the past seven years. Prior to being appointed to this position I practiced law, and counseled hundreds of people who desperately needed legal advice and representation, but could not afford to hire an attorney. As a member of the Supreme Court Commission on Courts of Limited Jurisdiction, I am actively involved in the training of the judges presiding over the city, justice's, and municipal courts across this state. In the course of that training it has become very apparent that the vast majority of litigants cannot afford to hire attorneys, and that they come to court with little or no legal information to rely upon. As a result, the presiding judge is placed in a difficult position. The judge is forced to either maintain his or her neutrality, in which case the unrepresented litigant is taken advantage of, or, attempt to level the playing field by giving "guidance" as the case unfolds. In either case, the system fails as the parties often times do not understand the legal basis for the judge's decision, or the rights they may have had and failed to raise or exercise.

Neither the judge, or the clerks of court, are permitted to provide legal advice to parties wanting to bring a lawsuit, or those responding to a suit against them. While the internet provides some information, it is useless unless you know how to apply it. People frequently appear at the clerk's counter desperate for direction. My experience is that most clerks will provide what guidance they can, but are quick to tell people that they should call an attorney. In some cases the person may receive a set of forms, however, they are left their own creativity to figure out how to apply their circumstances to the forms and prepare them in a manner acceptable to the court. Once again, the court cannot maintain its neutrality while at the same time providing incomplete information to either side of a lawsuit.

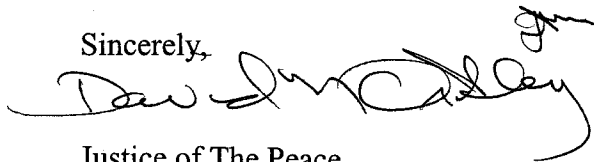
Our court handles in excess of six thousand civil cases in a year. We have a mediation program which results in approximately fifty five percent of mediated cases being settled. This success rate is the result of the parties having an opportunity to sit face to face with a mediator, get basic information about the law as it applies to their case, and the pros and cons of litigation. Once informed of even the basic tenants of law, and the role that the judicial system plays in determining disputes, and enforcing civil judgments, the parties find common ground and resolve their dispute on their terms. This bill will help provide the basic information people need to better understand their rights, the role that the court may play in resolving their dispute, and the alternatives to litigation. Just as important, it will provide information that will help the citizens of this state recognize legal issues, understand their rights and responsibilities, and avoid the necessity of litigation.

As I review hundreds of Answers filed in civil lawsuits it is painfully obvious that most people do not comprehend basic legal principles, or understand the role that the courts play in our system of government. While they may possess a basic understanding which is based in common sense, they do not fully appreciate the process by which their rights, or legal obligations, are determined and enforced. As such, they come to court unprepared and uneducated. Classic examples are the consumer debtor in a collections case, or a parent in dissolution of marriage case. Without obtaining information prior to appearing in court, these people are left to the mercy of a judicial system which is already over flowing. As funding for the Legal Services Corporation has dwindled, the vast majority of people who do not have the financial resources to hire an attorney struggle to weave their way through the system- a system that has not traditionally provided information and guidance. In this day and age of information technology this must change!

The courts of this state will always have more work than they are able to comfortably process. As our society becomes more complicated people will increasingly look to the government, and the courts, for information about law and rights under the law. While portions of the private sector attempt to meet basic needs, that effort has proven wholly inadequate in addressing the existing needs, or the needs of the future. The bar has struggled in its efforts to respond to this crisis. This bill is a small but important step. It will provide the resources and tools necessary to establish a network of outlets for the dissemination of legal information. In partnership with the bar association, and the legal profession as a whole, it will serve to provide meaningful access to the judicial system that is presently non-existent.

I respectfully urge that you support this bill as drafted.

Sincerely,

A handwritten signature in dark ink, appearing to read "David J. McClellan", written over a horizontal line.

Justice of The Peace